IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4952 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSANBHAI UKABHAI VEKARIYA

Versus

STATE OF GUJARAT

Appearance:

MR DIPAK THAKKAR FOR MR YM THAKKAR for Petitioner

MR SJ DAVE, AGP for Respondent No.1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/07/2000

ORAL JUDGEMENT

This petition, under Article 226 of the Constitution of India, challenges the order of detention dated 15-3-2000 which has been passed by the District Magistrate, Junagadh in exercise of powers under Sec.3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (`the Act' for short) against the petitioner with a view to prevent him

from black marketing of essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene essential to the community.

2. Heard learned advocate for the petitioner, Mr.Dipak Thakkar for Y.M.Thakkar, learned AGP for the respondent No.1, Mr.S.J.Dave and learned Addl. Central Govt. Standing Counsel for the respondent No.4-Ms.P.J.Davawala.

3. Mr.Thakkar has mainly argued that the petitioner has sent a representation through his advocate by Registered A/D post on 24-4-2000 and though the same has been received by the District Magistrate, Junagadh on 1-5-2000, it was not forwarded by the authority to the concerned authority till 3-5-2000 and hence, there is a delay. He has argued that by way of that representation (Annexure-E), petitioner has demanded the statements of six witnesses namely, Meram Tapu Makwana, Kanji Kacharabhai Malakiya, Mansukh Hamir Loladiya, Babulal Karsan, Labhuben Goganbhai Makwana Gokal Ladha Thrada, which have been mentioned in the grounds of detention by the detaining authority at page 4 in ground No.8, for making an effective representation against the order of detention, but same have not been supplied by the authority and, therefore, rights of the petitioner under Article 22(5) of the Constitution of India are violated. He has further argued that though it has been mentioned in the grounds of detention, copies thereof have not been annexed with it except the statement of Labubhai and, therefore, order of detention may be quashed and set aside.

4. I have gone through the statements which have been supplied by the detaining authority along with the grounds of detention more particularly regular page Nos. 75, 81, 85, 89 and 97 which show that copies of statements of aforesaid witnesses have not been supplied by the detaining authority to the petitioner pursuant to his demand vide representation dated 24-4-2000.

5. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copies of the statements and documents with the detention order. Here in this case, copies of the statements of witnesses mentioned above were not been supplied to the petitioner though demanded vide representation dated 24-4-2000. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

6. It appears that an affidavit-in-reply was filed by the District Magistrate, Junagadh, without applying her mind. She is the same District Magistrate, who, previously also, affirmed this type of affidavit and produced before this Court in another petition. It is not a healthy practice adopted by the respondent District Magistrate which is required to be deprecated. I do not observe anything against her at this stage. Copy of this order be sent to District Magistrate, Junagadh for her personal information.

7. In view of the above, the petition is allowed. The order of detention dated 15-3-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Karsanbhai Ukabhai Vekariya is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

radhan/